

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GUSTAVO TREVINO,

Defendant-Appellant.

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UNPUBLISHED

July 30, 1999

No. 208471

Lenawee Circuit Court

LC No. 95-006386 FH

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GUSTAVO TREVINO,

Defendant-Appellant.

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No. 208472

Lenawee Circuit Court

LC No. 95-006387 FH

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Defendant appeals as on leave granted his jury trial conviction for delivery of less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and his guilty plea conviction for possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). Defendant was sentenced to 48 to 480 months' imprisonment for the delivery conviction and 12 to 48 months' imprisonment for the possession conviction, to be served consecutively. We affirm.

Defendant contends he was denied a fair trial when the police informant testified that defendant sold drugs to everyone in the county. We disagree. Defendant failed to preserve this issue because he did not object below. An unpreserved claimed error will not be considered by this Court for the first

time on appeal unless the claimed error could have been decisive of the outcome. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). Review of the trial transcript reveals that the testimony would not have been decisive of the outcome. Defendant argues that the police informant's testimony was incredible because he lied about defendant's actions in an attempt to avoid prison. Additionally, this evidence was not introduced by the prosecutor but injected into the proceedings during cross-examination. Hence, appellate review is waived. *People v Yarger*, 193 Mich App 532, 538-539; 485 NW2d 119 (1992).

Defendant also contends that defense counsel was ineffective for failing to request an instruction on the lesser included offense of simple possession. We disagree. "To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and there is a reasonable probability that, but for counsel's error, the results of the proceedings would have been different." *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). The alleged deficiency must be prejudicial to the defendant, and the defendant must overcome the presumption that the challenged action was sound trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Here, such is not the case.

Defendant further asserts that the trial court erroneously considered prior invalid convictions and that the judgment of sentence was inaccurate. The prior counselless misdemeanors were not improperly considered because defendant, in those instances, was not sentenced to imprisonment. See *People v Richert (After Remand)*, 216 Mich App 186, 195; 548 NW2d 924 (1996).

Defendant also contends he is entitled to an amendment of the judgment of sentence on the grounds that it fails to accurately reflect the sentence imposed. This claim is similarly without merit since our review of the sentencing transcript and the judgment of sentence reveals such not to be the case.

Finally, defendant asserts that the trial court failed to exercise its discretion because it erroneously believed that a mandatory one-year minimum sentence for the possession conviction need be imposed. Review of the transcript reveals that the trial court was aware of its discretion.

Affirmed.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff